



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2009-1131]

RIN 1625-AA01

Anchorage Regulations; Narragansett Bay and Rhode Island Sound, RI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing an obsolete naval explosives anchorage in Narragansett Bay, Rhode Island, and adding an offshore anchorage in Rhode Island Sound south of Brenton Point, Rhode Island, for use by vessels waiting to enter Narragansett Bay.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-1131 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-1131 in the "Keyword" box, and then clicking "Search." This material

is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England, 401-435-2351. If you have questions on viewing the docket, please call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 21, 2011, we published a notice of proposed rulemaking (NPRM) entitled "Anchorage Regulations; Narragansett Bay and Rhode Island Sound, RI," in the Federal Register (76 FR 15246). We received nine comments on the proposed rule.

Basis and Purpose

The Secretary of Homeland Security has delegated to the Coast Guard the authority to establish and regulate anchorage grounds in accordance with 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; and

Department of Homeland Security Delegation No. 0170.1. The purpose of this rule is to remove an obsolete and no longer used anchorage in Narragansett Bay from the Code of Federal Regulations (CFR), and formalize and codify an area of Rhode Island Sound that under current informal practice is routinely used by mariners as an anchorage while waiting to enter Narragansett Bay.

Background

This rule removes the Naval explosives anchorage described in 33 CFR 110.145(a)(2)(ii). Naval Station Newport, Rhode Island had indicated to the Coast Guard that this anchorage is obsolete and no longer necessary for naval purposes. Leaving this obsolete anchorage in the CFR and on navigation charts leaves mariners with the mistaken impression that the area is reserved for a special purpose (i.e., explosives vessel anchoring) when in fact, it is no longer used or needed for that purpose.

The rule also adds a new anchorage to formalize and codify the current practice of commercial vessels that anchor in an area south of Brenton Point, Newport, Rhode Island, while waiting to enter Narragansett Bay. Establishing this anchorage in the CFR, and placing it on navigation charts, will remove ambiguity and clarify for

mariners the preferred and safest area in which to anchor offshore when waiting to enter Narragansett Bay.

The new anchorage area would encroach on a Navy Restricted Area (33 CFR 334.78). According to the regulation, anchoring within the Restricted Area is precluded only during periods of mine warfare training. However, mine warfare training is no longer conducted in that area. Thus, the Coast Guard requested that the U.S. Army Corps of Engineers remove the now-defunct area from the Code of Federal Regulations. In a letter received by the Corps of Engineers on May 5, 2011, the U.S. Navy also requested that the Corps of Engineers disestablish the Restricted Area as it is no longer needed. (A copy of the letter from the Commanding Officer, Naval Station Newport, is included in the docket for this rule.) In February 2012 the Corps of Engineers initiated the rulemaking process to remove the Restricted Area from the Code of Federal Regulations.

Discussion of Comments and Changes

We received nine comments on the proposed rule. One letter, from the Office of Environmental Policy and Compliance, U.S. Department of the Interior (DOI), stated that DOI had no comment on the proposed rule.

The Coast Guard received no comments opposed to the

section of this rule that disestablishes the obsolete naval explosives anchorage in Narragansett Bay.

The other comments were from private citizens, municipalities in the Narragansett Bay area, a Rhode Island state representative, and the Massachusetts Attorney General, among others. These comments expressed a generally consistent theme: comments requested that the Coast Guard conduct a more thorough environmental impact analysis consistent with the National Environmental Policy Act (NEPA). Specifically, comments requested that the Coast Guard's NEPA analysis discuss the possible adverse impacts to the environment from potential use of the proposed anchorage by tankers that may deliver liquefied natural gas (LNG) to the proposed Weaver's Cove LLC import facility in Mt. Hope Bay, Massachusetts. Several comments requested a public meeting to discuss the NEPA issue *vis à vis* the Weaver's Cove LNG proposal.

At the time the Coast Guard published its March 2011 NPRM for this rulemaking, Weaver's Cove LLC was seeking approval from the Federal Energy Regulatory Commission (FERC) to build and operate a waterfront LNG facility in Fall River, Massachusetts. On June 20, 2011, Weaver's Cove LLC formally notified FERC that it was withdrawing its proposals. On July 6, 2011, FERC issued documentation

vacating its July 15, 2005, authorization to Weaver's Cove for a waterfront facility in Fall River, Massachusetts, and terminating its (FERC's) processing of the Weaver's Cove application for an LNG offload facility in Mt. Hope Bay. These two documents issued by FERC officially terminated the Weaver's Cove proposal. (Copies of the Weaver's Cove letter to FERC of June 20, 2011, and FERC's documentation issued on July 6, 2011, are included in the docket for this rule.) There are no other proposals before FERC to import LNG into Narragansett Bay or Mt. Hope Bay.

Because there are no proposals to import LNG into Narragansett Bay or Mt. Hope Bay, there are no LNG-related impacts to be analyzed. Some comments challenge the Coast Guard's use of and reliance upon its directives while other comments assert the Coast Guard must comply with other federal laws. Responses to those comments immediately follow. Additionally, the methodology used by the Coast Guard to conduct its environmental analysis in compliance with NEPA is discussed in the Environment section below.

With respect to a public meeting, the Coast Guard believes a public meeting is not necessary because all requests for a public meeting were made in connection with concern about a (now-withdrawn) plan for the creation of an LNG terminal in the Fall River area. Because there is no

foreseeable plan for an LNG terminal in the Fall River area, the Coast Guard does not believe that a public meeting would aid this rulemaking. The Coast Guard contacted the Corporation Counsel for the city of Fall River, which was a leading opponent to the Weaver's Cove LNG proposal and had requested a public meeting, and learned that with the withdrawal of the Weaver's Cove LNG proposal, and there being no other LNG proposals pending or anticipated, Fall River believes there is no longer a need for a public meeting to discuss this anchorage regulation.

Even though the LNG-related concerns raised in the comments are no longer relevant, the Coast Guard wishes to clarify that it is incorrect to view the establishment of this anchorage as giving permission for vessels to anchor. Rather, commercial vessels of all kinds already can and do anchor in this area; the act of designating this anchorage is intended simply to reflect current practices for the purpose of promoting safety of navigation.

One comment, expressly adopted by the comments of four others, challenges the Coast Guard's use of categorical exclusion 34(f) in accordance with Section 2.B.2 and Figure 2-1 of the NEPA Implementing Procedures and Policy for Considering Environmental Impacts, Commandant Instruction M164175.1D, and Department of Homeland Security Management

Directive 023-01.

We determined that reliance on the Coast Guard-specific categorical exclusion is proper despite the fact that at the time the NPRM was published, Department of Homeland Security Management Directive 023-01 did not contain unique categorical exclusions for the Coast Guard. However, that directive was updated on October 3, 2011, to reflect the Council on Environmental Quality-approved categorical exclusions for the Coast Guard.

The same comment also alleges that the Coast Guard action adding the anchorage is a piece of a larger action in contravention of Department of Homeland Security Management Directive 023-01.

We determined that the proposed action adding the anchorage is not a piece of a larger action. The designation by the Coast Guard of an anchorage that overlaps an obsolete U.S. Navy restricted area is not part of an action by the Army Corps of Engineers to remove the restricted area designation and vice versa. In its determination whether to designate the area as an anchorage, the Coast Guard contacted Commanding Officer, Naval Station Newport to verify that there are no unexploded devices that would pose a hazard to navigation. Commanding Officer, Naval Station Newport, confirmed that

there are no unexploded devices and wrote a letter to Chief, Regulatory Division, U.S. Army Corps of Engineers to disestablish the restricted area as it is no longer used by the Navy. Thus, the Army Corps of Engineers' ability to remove the designation is not an integral part of nor required for the establishment of the anchorage area. A copy of Commanding Officer, Naval Station Newport's letter of 5 May 2011 is included in the docket for this rule.

One comment states that the Coast Guard failed to acknowledge the designation of the entire Narragansett Bay as an environmentally sensitive area and that the proposed impact on the entire bay area must be analyzed.

The Coast Guard acknowledges that Narragansett Bay is an environmentally sensitive area designated by the U.S. Environmental Protection Agency under the National Estuary Program. In conducting our Categorical Exclusion Determination, we identified the closest waterway location designated as an environmentally sensitive area. We determined that establishing an anchorage in this area would not affect the designated environmental area because the area is already used as an anchorage and our action is administrative in nature. Therefore, we concluded that if the proposed action did not affect the closest environmentally sensitive area, it would also not affect

the other environmentally sensitive areas further from the proposed anchorage.

Four comments claimed that the Coast Guard action establishing the anchorage must undergo a NEPA Environmental Assessment (EA) before mariners would be regularly using the anchorage area.

We determined that we are not required to conduct an EA under this line of reasoning because mariners have historically used the area as an anchorage, and this usage was not the result of a Coast Guard action. The Coast Guard action of placing the existing anchorage area in the public notice and on navigation charts does not alter the current activity at that location. The Coast Guard action simply removes ambiguity and clarifies for mariners the preferred and safest area in which to anchor offshore when waiting to enter Narragansett Bay.

Two comments recommended the U.S. Fish and Wildlife Service determine whether the proposed action establishing the anchorage would have adverse impacts.

We determined that because the U.S. Department of the Interior under which the U.S. Fish and Wildlife Service operates responded that the Department has no comment on the proposed rulemaking, consultation with the U.S. Fish and Wildlife Service was not necessary.

One comment requested that we clearly state the size of the new anchorage. The new Brenton Point anchorage established by this rule is a parallelogram-shaped box approximately 4.98 nautical miles by 1.95 nautical miles, which produces an anchorage of approximately 9.7 square nautical miles. Designing the size and shape of anchorages is a subjective process that considers many factors, including type and number of vessels that may use the anchorage, water depth, bottom topography, nearby vessel traffic patterns, etc. All of those factors were considered in designing the Brenton Point anchorage. The size of this anchorage is considered to be the minimum necessary to safely accommodate the type and number of commercial vessels that may use it, and its size is consistent with or smaller than many other anchorages in the southeastern New England area.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning

and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect minimal additional cost impacts to the industry because this rule is not imposing fees, permits, or specialized requirements for the maritime industry to utilize this anchorage area. The effect of this rule is not significant as it removes one obsolete anchorage that is no longer used by the U.S. Navy, and documents and codifies another area that is currently used by commercial vessels. This improves safety for vessels using the anchorage grounds, facilitates the transit of deep draft vessels through the area, and improves safety for other vessels transiting in the vicinity of the new anchorage area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in

their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels that have a need to anchor in Narragansett Bay or Rhode Island Sound at the entrance to Narragansett Bay.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule only codifies current navigation practices that are already in use by small entities in this area. The anchorage will not affect vessels' schedules or their ability to freely transit within these areas of Narragansett Bay or Rhode Island Sound. The anchorage imposes no monetary expenses on small entities since it does not require them to purchase any new equipment, hire additional crew, or make any other expenditures.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), in

the NPRM we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule does not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order

12630, Governmental Actions and Interference with
Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary

consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. The evaluation of the impact of LNG vessels on the anchorage is not required because the proposed LNG facility at Weaver's Cove has been withdrawn as documented above, and thus there are no reasonably foreseeable LNG-related impacts that need to be considered.

In accordance with the Coast Guard NEPA implementing Instruction, this rule is categorically excluded from further analysis and documentation under NEPA. Since this rule involves removal of an obsolete anchorage area and establishment of another, Categorical Exclusion (34)(f) under Figure 2-1 of the Instruction applies. The rule is

no longer controversial. Public comments and input primarily addressed issues arising from the now-abandoned proposal to create an LNG facility at Weaver's Cove, Fall River, Massachusetts. The Coast Guard has no evidence to suggest that any other criteria noted in DHS D 023-01, Section V.F.12 or COMDTINST 16475.1D Chapter 2 B 2(b) would suggest an inquiry beyond the categorical exclusion. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110--ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Remove and reserve § 110.145(a)(2)(ii).

3. Add § 110.149 to subpart B to read as follows:

§ 110.149 Narragansett Bay, RI.

(a) Brenton Point anchorage ground. An area bounded

by the following coordinates: 41°22'37.1"N, 71°14'40.3"W;
thence to 41°20'42.8"N, 71°14'40.3"W; thence to
41°18'24.1"N, 71°20'32.5"W; thence to 41°20'22.6"N,
71°20'32.5"W; thence back to point of origin.

(b) The following regulations apply in the Brenton
Point anchorage ground.

(1) Prior to anchoring within the anchorage area, all
vessels shall notify the Coast Guard Captain of the Port
via VHF-FM Channel 16.

(2) Except as otherwise provided, no vessel may occupy
this anchorage ground for a period of time in excess of 96
hours without prior approval of the Captain of the Port.

(3) If a request is made for the long-term lay up of a
vessel, the Captain of the Port may establish special
conditions with which the vessel must comply in order for
such a request to be approved.

(4) No vessel in such condition that it is likely to
sink or otherwise become a menace or obstruction to
navigation or anchorage of other vessels shall occupy an
anchorage except in cases where unforeseen circumstances
create conditions of imminent peril to personnel and then
only for such period as may be authorized by the Captain of
the Port.

(5) Anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage area.

(6) The Coast Guard Captain of the Port may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety and security.

(7) Any vessel anchored in these grounds must be capable of getting underway if ordered by the Captain of the Port and must be able to do so within two hours of notification by the Captain of the Port. If a vessel will not be able to get underway within two hours of notification, permission must be requested from the Captain of the Port to remain in the anchorage. No vessel shall anchor in a "dead ship" status (propulsion or control unavailable for normal operations) without prior approval of the Captain of the Port.

(8) Brenton Point anchorage ground is a general anchorage area reserved primarily for commercial vessels waiting to enter Narragansett Bay.

(9) Temporary floats or buoys for marking anchors or moorings in place will be allowed in this area. Fixed mooring piles or stakes will not be allowed.

(10) All coordinates referenced use datum: NAD 83.

Dated: July 13, 2012

Daniel B. Abel
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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